

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Bob Holden, Governor • Stephen M. Mahfood, Director

RECEIVED

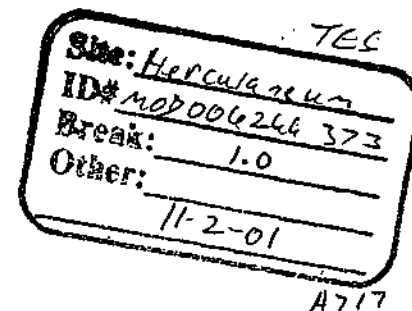
NOV 06 2001

DIVISION OF ENVIRONMENTAL QUALITY
P.O. Box 176 Jefferson City, MO 65102-0176

DEC/ADMINISTRATION

November 2, 2001

Mr. Louis J. Maruchau, Vice President Law
The Doe Run Company
1801 Park 270 Drive
Suite 300
St. Louis, MO 63146



Dear Mr. Maruchau:

I am writing in response to your letter to me dated October 5, 2001, regarding Notice of Violation (NOV) #5502. A copy of this letter is enclosed. You received the NOV from our office on September 24, 2001. The hazardous waste violation was also cited in the Order to Abate and Cease and Desist Violations sent to The Doe Run Company on September 25, 2001. I have reviewed the information and justifications provided in your letter. Please note that our office plans to resolve this matter through the appeal process after having received your Petition for Appeal of the Order on October 5, 2001.

If you have questions regarding this letter, you may contact me at 573-751-2032.

Sincerely,

HAZARDOUS WASTE PROGRAM

Kathy S. Flippin
Chief
Hazardous Waste Enforcement Unit

KF:cah

Enclosure

c: Mr. Joe Bindbeutel, Attorney General's Office
Mr. Dan Schuette, Air and Land Protection Division
Southwest Regional Office
St. Louis Regional Office

40173249



SUPERFUND RECORDS

THE
DOE RUN
COMPANY

SUITE 300
1801 PARK 270 DRIVE
ST. LOUIS, MO 63146
FAX 314-453-7177

LOUIS J. MARUCHEAU
VICE PRESIDENT LAW
AND ASSISTANT SECRETARY
314 453-7150
lmarucneau@doerun.com

October 5, 2001

RECEIVED

OCT 10 2001

HAZARDOUS WASTE PROGRAM
MO DEPT OF NATURAL RESOURCES

VIA CERTIFIED MAIL

Ms. Kathy Flippin
Chief
Hazardous Waste Enforcement Unit
Hazardous Waste Program
Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102

Re: Notice of Violation No. 5502
Dated 9-22-01

Dear Ms. Flippin:

The Director of the Missouri Hazardous Waste Program by letter dated September 22, 2001 provided The Doe Run Company ("Doe Run") with a copy of the above referenced Notice of Violation ("NOV"). The September 22nd letter forwarding the NOV was received on September 24, 2001. This letter is to advise you that Doe Run is formally contesting the above referenced NOV as not constituting any violation under the cited statute.

The NOV states that The Doe Run Company is in violation of Section 260.390.1(1), RSMo, "Operation of a hazardous waste disposal facility without first obtaining a hazardous waste facility permit." The NOV says the inspection resulting in this NOV was made on 9-21-01. While the NOV does not contain any description of what exactly The Doe Run Company is alleged to have done, the forwarding letter from the Director of the Hazardous Waste Program states that the NOV is "in regard to the fugitive lead-containing dust released/disposed along haul roads in Herculanum."

By its reference to "fugitive lead-containing dust" it would appear that this NOV is actually asserting that there is hazardous waste permit jurisdiction over air emissions. Because both the federal and state hazardous waste statutes require that the material being disposed must first be defined as a "solid waste" to be a hazardous waste and because the definition of "solid waste" does not include air emissions, whether gases or particulates, it is clear that this assertion is beyond the jurisdiction of the Hazardous Waste Program. Otherwise the Hazardous Waste Program would have been requiring

permits from all Missouri air emitters of hazardous substances that would otherwise meet the definition of "hazardous waste". A review of EPA's Toxics Release Inventory shows that there are many facilities in Missouri that might meet such criteria.

While the letter from the Director only speaks of "fugitive lead-containing dust", the reference to it being "disposed" along haul roads in Herculaneum may indicate that the NOV is referring to the episode at the end of August 2001 when lead concentrate was found on city streets in Herculaneum. If this is what the NOV is referring to, then Doe Run believes that this does not constitute the intentional operation of a hazardous disposal facility without a permit.

First, the lead concentrate that apparently spilled from lead concentrate haulage trucks was a commercial product, not a waste, and was not intentionally discarded. Upon being notified that small amounts of what appeared to be lead concentrate were found on the street, Doe Run swept up and vacuumed the material from the street and processed it through the smelter. This material, therefore, would not be classified as a "solid waste" under federal or Missouri law.

Further, rather than Doe Run disposing of the material when it was in its possession, any unintentional spillage of the material would be regulated under the U.S. Department of Transportation Hazardous Materials regulations applicable to commercial shipping of material. Doe Run is not aware that it has been the position of the Hazardous Waste Program that any unintentional spillage of material later retrieved during commercial shipping constitutes an intentional act by either the shipper or the carrier of disposal of hazardous waste without a permit, a felony under federal law.

In any event, the spillage discovered at the end of August 2000 is not a continuing violation needing corrective actions. Nevertheless, without admitting any liability in this matter, Doe Run is advising the Missouri Hazardous Waste Program that it has instituted a number of actions which it believes will minimize any unintentional spillage of material from trucks hauling lead concentrate.

In addition to continuing its past practice of wheel washing of trucks hauling lead concentrate, Doe Run has added manual pressure washing of the wheels, wheel wells, undercarriages, and tailgates of trucks hauling lead concentrate. More importantly, in a more permanent solution to limiting any unintentional spillage, Doe Run has also authorized construction of a new lead concentrate unloading facility which will ensure that the wheels of the trucks unloading lead concentrate do not come in contact with any lead concentrate.

Other actions which Doe Run is taking which will reduce fugitive emissions from the facility include the sealing of employee parking lots and the paving of the currently unpaved road within Doe Run property. This road is used both by trucks hauling slag between the slag granulation area and the slag storage area and by other trucks accessing various areas of the smelter facility. Also, until this road on Doe Run

property is paved, any trucks using the unpaved road will have their wheels washed prior to exiting the facility.

Please advise if you wish to meet to further discuss the above referenced NOV. You may contact me at the above telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis J. Maruchean". The signature is fluid and cursive, with a long horizontal stroke at the end.

Louis J. Maruchean
Vice President Law

cc: SLRO